

11/23/98

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Habanos, S.A.

Serial No. 75/011,205

Michael Krinsky of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C. for applicant.

Leigh Case, Trademark Examining Attorney, Law Office 105
(Thomas G. Howell, Managing Attorney).

Before Cissel, Hanak and Wendel, Administrative Trademark Judges.

Opinion by Wendel, Administrative Trademark Judge:

Habanos, S.A. has filed an application to register the mark VEGUEROS for "raw tobacco, cigars, cigarettes, cut tobacco, rappee, manufactured tobacco of all kinds, matches, tobacco, smoking pipes, pipe holders-not of precious metal, ashtrays-not of precious metal, match

boxes-not of precious metal, cigar cases-not of precious metal, humidors-not of precious metal."¹

Registration has been finally refused on the ground that the mark is merely descriptive under Section 2(e)(1) of the Trademark Act.² Applicant and the Examining Attorney have filed briefs, but no oral hearing was requested.

The Examining Attorney maintains that applicant's mark VEGUEROS is the foreign equivalent of the word "cigars" and thus merely describes, or is the generic name for, applicant's goods, which include cigars, cigarettes, and various forms of tobacco. To support her position, the Examining Attorney has introduced a copy of the following definition from Cassell's Spanish-English English-Spanish Dictionary (1982)

veguero, -ra, a., of fertile plain. - *n.m.*,
cigar; (Hisp. Am.) tobacco-planter.

Applicant, on the other hand, argues that the principal meaning to most Spanish-speaking persons of the

¹ The application was filed under Section 44(e) of the Trademark Act, based on applicant's Cuban Registration No. 121,967, issued Jan. 18, 1995.

² The Examining Attorney also made final the requirement for the submission of a translation of the word "vegueros" as "cigars." Applicant had previously submitted the translation "a farmer of a fertile lowland" or "a tobacco farmer or planter." The Examining Attorney has not separately argued this basis for refusal in her brief, and in view of our disposition of the case, we reverse the requirement for a further translation. The present translation is accepted.

word "veguero," when used as a noun, is "one who farms a lowland", or, specifically in Cuba, "a tobacco planter or farmer." In support thereof, applicant has submitted the following translation from Simon and Schuster's International Dictionary (1973)

veguero, ra, a., 1. pertaining to a fertile lowland. 2.(Cuba) pertaining to a tobacco plantation. -m.,f. 1. one who farms a lowland. 2. (Cuba) tobacco planter or farmer. -m. fine type of cigar made from a single rolled leaf.

Applicant has also made of record the declaration of Juana Quinones Goergen, an Assistant Professor of Modern Languages at DePaul University. Professor Goergen states that the principal definition of "veguero" in Spanish, when used as a noun, is "one who farms a lowland", while in Cuba its principal meaning is "tobacco planter or farmer." She further states that

[s]ome Spanish-English dictionaries indicate a secondary definition which is specific only to Cuba of the noun "veguero" as a "cigar"; this is not, however, the way in which the word is commonly understood or used either in Cuba or in other Spanish-speaking countries. The word "vegueros" would not likely be understood to describe the tobacco product itself but rather would be understood to refer to a farmer in general or to the person who engages in the cultivation of tobacco.

Applicant argues that since the word has other meanings besides "cigar", and the remaining are at best suggestive, VEGUEROS cannot be held merely descriptive of

applicant's goods, citing *In re Atavio Inc.*, 25 USPQ2d 1361 (TTAB 1992). The Examining Attorney, in response, contends that the fact that other meanings exist for the word "vegueros" should not detract from its descriptive, or even generic, significance in connection with the present goods.

It is well established that a foreign equivalent from a non-obscure language of a merely descriptive English term is no more registrable than the English term itself, despite the fact that the foreign term may not be commonly known to the general public in the United States. *In re Atavio Inc.*, supra at 1362; *In re Geo. A. Hormel & Co.*, 227 USPQ 813 (TTAB 1985). But at the same time, as we stated in Atavio, the standard of equivalency to be applied to a foreign term versus an English term under Section 2(e)(1) is identical to that which was applied by the Court to a foreign term versus an English term under Section 2(d) in *In re Sarkli*, 721 F.2d 353, 220 USPQ 111, 113 (Fed. Cir. 1983). The required equivalency of the terms is no less stringent than that applicable to two English terms.

In the present case, the Spanish word "vegueros" must be shown to be the equivalent of the English word "cigars" to be merely descriptive of any of applicant's goods. On the basis of the dictionary definitions before us, however, we find it difficult to conclude that, in the United

States, "vegueros" would be so interpreted. It is readily apparent that there is more than one recognized translation for the term. Even if we limit ourselves to the meanings the dictionaries indicate the term has in Cuba, because the goods come from Cuba, we still are confronted with two different meanings, "tobacco farmer or planter" as well as "cigar."

We find the determinative factor to be the declaration of Professor Goergen with respect to the meanings which would be most commonly attributed to the term by most Spanish-speaking persons in this country. The most recognized English equivalents would accordingly be either "a farmer in general" or "a tobacco planter." Even with the most applicable translation, the general connotation would be that of a person involved with tobacco, not the tobacco product itself.

Accordingly, on the record before us, we are led to the conclusion that VEGUEROS is not merely descriptive of applicant's goods. While we admit that this determination is not without some doubt, as was the case in Atavio, we find it appropriate to resolve this doubt in favor of applicant and to allow the application to go forward to publication.

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Decision: The refusal to register under Section
2(e)(1) is reversed.

R. F. Cissel

E. W. Hanak

H. R. Wendel
Trademark Administrative Judges,
Trademark Trial and Appeal Board

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